In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-988

LETA MOORE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The United States brought this action under the Medical Care Recovery Act to recover the value of medical treatment provided to petitioner's serviceman husband and their children, following an automobile accident resulting from petitioner's negligent driving (Pet. App. E, pp. 46a-47a). The district court denied recovery. It held that the government's claim was barred because, under Maine doctrines of interspousal and parental immunity from suit, petitioner could not be sued by her husband and children for damages (Pet. App. A, pp. 1a-6a).

The court of appeals reversed (Pet. App. E, pp. 45a-78a),[1] holding (*id.*, p. 48a):

[1]The court of appeals initially affirmed, with one judge dissenting (Pet. App. C, pp. 14a-42a). The court then granted the government's timely petition for rehearing (Pet. App. D, pp. 43a-44a), and subsequently reversed the judgment of the district court. Petitioner's petition for rehearing was denied (Pet. App. G, p. 81a).

> * * * the Medical Care Recovery Act confers on the United States an independent right of recovery which is unimpaired by the vagaries of state family immunity laws; otherwise stated, enforcement of the Act is free of the impact of right-to-sue limitations imposed by a state's family immunity laws. * * *

The decision of the court of appeals was correct, and further review is not warranted.

1. The Medical Care Recovery Act provides that where the United States is authorized or required to pay for medical care of a person who is injured "under circumstances creating a tort liability upon some third person," the United States can recover the value of this medical care from the third party. 42 U.S.C. 2651(a). The federal courts, in a long line of decisions, have uniformly interpreted the Act as giving the United States an independent right of recovery and not merely subrogating the United States to the injured party's right to sue the tortfeasor. *United States* v. *Haynes*, 445 F. 2d 907 (C.A. 5); *United States* v. *Housing Authority of the City of Bremerton*, 415 F. 2d 239 (C.A. 9); *United States* v. *Gera*, 409 F. 2d 117 (C.A. 3); *United States* v. *York*, 398 F. 2d 582 (C.A. 6); *United States* v. *Merrigan*, 389 F. 2d 21 (C.A. 3); *United States* v. *Fort Benning Rifle and Pistol Club*, 387 F. 2d 884 (C.A. 5); see *United States* v. *Government Employees Insurance Co.*, 440 F. 2d 1338 (C.A. 5); *Government Employees Insurance Co.* v. *United States*, 376 F. 2d 836 (C.A. 4).

Accordingly, the courts have held that the government's right to recover is not subject to purely personal defenses that may exist between the party injured and the tortfeasor, but which do not affect the underlying substantive tort liability. *United States* v. *Haynes, supra*, 445 F. 2d at

910 (state community-property rule preventing suit by wife against husband for medical expenses does not negate tort liability and does not bar recovery by United States); *United States* v. *Housing Authority of the City of Bremerton, supra,* 415 F. 2d at 242, 243 (contributory negligence of injured child's legal representative is no bar to recovery by United States); *United States* v. *Gera, supra,* 409 F. 2d at 119-120 (state statute of limitations is no bar to recovery by United States); *United States* v. *Fort Benning Rifle and Pistol Club, supra,* 387 F. 2d at 887 (statute of limitations is no bar).[2] That principle is particularly applicable in this case, for the policy underlying the traditional rule of interfamily immunity—preserving domestic harmony—is not implicated when the suit is brought by the United States rather than by the injured spouse or child. Cf. *United States* v. *Haynes, supra,* 445 F. 2d at 910 ("the marital relations policy behind this state procedure is inapplicable to the federal government"). Congress surely did not intend that a tortfeasor be excused from his obligation to reimburse the United States merely because state policy would preclude a suit brought by a member of his family.

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[2]*United States* v. *Gusto Distributing Co.,* 329 F. Supp. 578 (D. Mont.), upon which petitioner apparently relies (Pet. 14) (mistakenly citing the case as *Lee* v. *Phillips Petroleum Co.*, which appears on the following page), is not to the contrary. At issue there was whether Montana's workmen's compensation law prohibited recovery by the United States. The court held that under Montana law "there was no tort liability" created as a consequence of the injury (329 F. Supp. at 579), and that the United States therefore could not recover for the medical care given the workman. Here, by contrast, the court of appeals correctly determined that Maine's interfamily immunity doctrine "does not purge a spouse or parent tortfeasor of liability towards all and sundry" (Pet. App. E, p. 58a).

2. Petitioner mistakenly assumes that the Maine doctrine of interfamily immunity operates to extinguish all tort liability when the injured party is the spouse or child of the tortfeasor, and she therefore argues that the court below in effect created a federal common-law tort (Pet. 14-17). The court of appeals concluded, however, that the immunity operates as a procedural disability, rather than as a substantive defense extinguishing tort liability (Pet. App. E, p. 48a). Review by this Court of this question of state law is unwarranted; in any event, for the reasons set forth in its opinion (see Pet. App. E, pp. 48a, 56a-58a), the court of appeals correctly interpreted Maine law.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1973.